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Features

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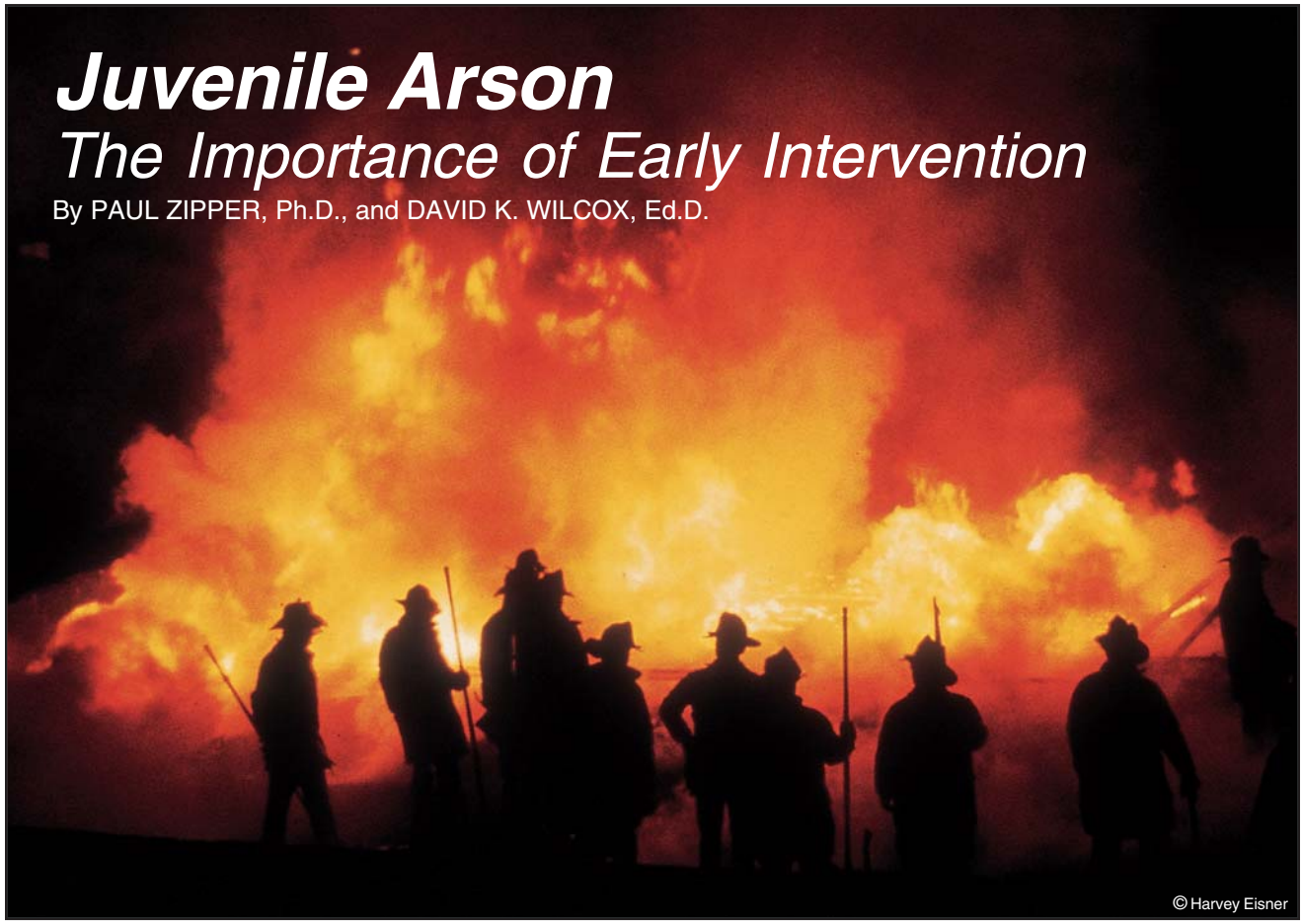
Juvenile Arson

The Importance of Early Intervention

By PAUL ZIPPER, Ph.D., and DAVID K. WILCOX, Ed.D.



Early one December morning, a blaze broke out in a tenement house. This wood-framed dwelling consisted of balloon construction with no built-in fire stops, which allowed the flames to travel easily from one part of the building to the other. Blazes in these types of structures present a nightmare for firefighters because the fire can sneak up on them.

When the call came in, the fire department scrambled into action. Personnel arrived and began suppression operations with military-like precision. Shortly thereafter, a private reported to the scene to provide relief. He went to the second-floor porch to extinguish some hot spots when the structure suddenly gave way and the second- and third-level porch roofs collapsed, crushing and trapping the firefighter under the debris. Despite Herculean efforts to rescue him, he died 2 days later of massive injuries.[1]

While the victim firefighter lay dying in a nearby hospital, his killer, a 12-year-old boy, sat nervously in an interview room. Fire investigation officers never consider the stakes higher than when a firefighter faces death at the hands of an arsonist. Families and communities find the pain just as intense if those hands belong to a juvenile. Authorities do not relax procedures when "only a kid" sets the fire.

Juvenile firesetting transcends easily defined professional boundaries. Because it involves fire, communities often expect the fire service to handle it. As this behavior sometimes derives its motivation from

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complex psychological dynamics, people often consider it an issue for mental health professionals to address. Also, setting certain types of blazes is a crime, assumed appropriate for law enforcement and the juvenile justice system to handle. In reality, effectively addressing juvenile firesetting by identifying it, holding the youth and family accountable, and providing appropriate assessment and intervention requires all three disciplines to work together as a coordinated team. Only then can the protection of property and the safety of both the youth and the community be ensured.

JUVENILES AND FIRESETTING

For well over 15 years, juveniles have contributed significantly to the number of arsons in the United States. In 2001, they represented 49 percent of all arson arrests.[2] Many additional blazes set by youths go undetected, unreported, or unsolved. As a result, these incidents have not appeared in databases that track incendiary fires. Between 2000 and 2002, authorities referred 1,241 Massachusetts juveniles to counseling services because of arsons. However, only 11 percent of these blazes involved a fire department response.[3] No one either reported these incidents to the proper authorities or considered the behavior dangerous because no loss of life or significant destruction of property occurred.

Only within the last 20 years have empirically based studies of juvenile firesetting begun to tease apart the many dynamics and variables associated with this dangerous behavior.[4] These findings have provided a better understanding of how to assess these actions and conduct appropriate intervention.

Many children display an interest in fire and a willingness to take that fascination a step further in actually playing with it. A study of youths from the third to eighth grades in 15 school districts throughout Oregon revealed that 32 percent of the students reported setting fires outside their homes and 29 percent said that they had started them in their residences.[5] Firesetting or playing with matches with no intent of causing extensive damage or hurting anyone occurs in the general population with some degree of regularity. Additionally, in 63 percent of the arsons by juveniles, a match or lighter served as the source of ignition.[6]

Data suggest that boys clearly outnumber girls in setting fires. A review of previous descriptive studies found that males held responsibility for 82 percent of the arsons;[7] other findings suggested a ratio of 9 boys to every girl involved in setting fires.[8] Other conclusions revealed that in 1993, females represented 12.5 percent of the juveniles arrested for firesetting—an increase of almost 53 percent compared with 1989 findings.[9]

Although children as young as 2 and 3 years of age can be involved in firesetting, it appears that this behavior generally occurs among older children. In a variety of studies, the mean age of children and adolescents identified as setting fires ranged from 9 to 12 years old.[10] Age alone cannot mitigate the serious effects of arson. Blazes caused by younger children often incur the most damage, cause the most monetary loss, and displace more individuals than fires set by adolescents.[11]

Numerous studies have focused on the relationship between family dysfunction and firesetting behavior in juveniles.[12] Findings revealed that parents of juvenile arsonists often experience personal and marital distress, and their children have exposure to stressful life events, poor supervision, and minimal family affiliation. There also were indications of greater parental psychopathology.[13] Additionally, parenting styles appeared inconsistent and comprised of harsh punishment and ineffective enforcement of consequences for undesirable behavior.[14] While earlier studies focused on the absence of a parent or a lack of parental involvement in the lives of these youths,[15] later research revealed that the level of disruption, poor parenting skills, and skewed emotional interactions in the family appeared more salient.[16]

From firesetting research, a picture has emerged of juveniles with low self-esteem, limited social problem-solving skills, and hampered abilities in negotiating complex social interactions. This may help explain why such a high prevalence of covert antisocial behavior exists among juveniles who set fires. Such conduct, while perhaps offering the opportunity to act out aggressive impulses, also helps avoid the humiliation of being caught and confronted by an authority figure in a problematic situation. Juveniles involved in arson may have few alternatives for addressing issues that arise in their lives, particularly in social settings and situations involving conflict. Setting fires appears to give them an outlet for their anger, distress, and anxiety—feelings that many of these youths have difficulty handling. Frequently, these juveniles report that they start blazes because of boredom or a lack of anything to do;[17] managing these feelings, just like handling other negative ones, requires a certain level of coping skills. These young arsonists tend to act impulsively and in an externalizing fashion when confronted with situations that provoke intense reactions, rather than thinking first about the consequences of their behavior.

> ***"Juvenile firesetting transcends easily defined professional boundaries."***

AUTHORITIES AND INTERVENTION

While an awareness of the clinical complexities associated with juvenile firesetting provides one perspective on this behavior, simply understanding what drives youths to arson does not solve the problem. Young people need intervention services; this requires a coordinated approach. Mental health and social service professionals should ask about the behavior and screen for it when working with a family or a youth. Fire service and law enforcement authorities must identify incidents linked to juveniles and either charge the youth for the offense or notify appropriate professionals to mandate services.

Many times, people perceive charging juveniles with a crime distasteful or worry that the youths will have a criminal record that will hamper them in the future. Alternatively,

authorities could allow an incident to go unnoticed, thus taking a risk that the child may continue to set fires, destroy property, and injure or kill others. Charging a juvenile for arson is not an attempt to criminalize the behavior or to stigmatize the youth. Instead, it represents a way to hold juveniles accountable for their actions. It helps youths and their families take the behavior seriously and recognize the need for an effective intervention program. Bringing charges ensures that this extremely dangerous and often-overlooked behavior receives the attention it deserves so that the fire that brought the juvenile to the attention of authorities is the last one the youth sets.

Investigating the Fire

Conducting the investigation proves difficult because fire, by nature, destroys the evidence surrounding its cause and starting point. Officials find more destruction the closer they get to the point of origin. Fire scene investigators trace a blaze's origin by reading patterns—first examining the area of most damage, the one which exhibits the lowest and deepest burns. Often, they arrive on scene and find the entire structure reduced to ashes.

Arson canines represent reliable forensic fire investigators. These dogs can sniff out the residue of accelerants that serve as the clearest indicators of incendiary fires. However, unless arsonists spill something on themselves and remain standing with the crowd watching the scene, the canine's incredible detective skills alone cannot identify the firesetter.

When responding to a fire, investigators must find, identify, and take statements from all witnesses. The interviews should begin before the blaze is extinguished. Ideally, the number of personnel at the site will allow for a group of interviewers to canvass the crowd and a team to investigate the blaze; this way, both jobs get done simultaneously. In the event that investigators must choose between beginning the origin-and-cause investigation or taking statements first, the authors recommend the latter. Emergency personnel can secure and preserve the fire scene; however, witnesses vanish as time elapses.

"Conducting the investigation proves difficult because fire, by nature, destroys the evidence surrounding its cause and starting point."

Witnesses do not always perceive the value of what they know. Effective interviewers on the scene can collect a surprising amount of information about, for example, who lived in the building or owned it. They can learn where and when the first signs of smoke and flame appeared, what typical routine the neighborhood follows, and whether anything unusual occurred at about the same time as someone first shouted, "Fire!" Witnesses also prove critical for establishing motive for the blaze because of their knowledge of neighborhood residents. While effective interviewers will get these people to talk and commit to a statement of facts, inexperienced investigators might inadvertently clear the scene and lose the opportunity to collect information from key players. Every officer can become a better interviewer by learning and practicing until they feel more confident.

Officers must understand that arson, by definition, is a crime of intent, which investigators can establish only through interviews and interrogations. To this end, agencies should strive to put together such a solid case that a suspect will find cooperation the only option.

Interviewing the Juvenile

Intent represents a state of mind; a person who intends to set a fire follows a specific course of action. The investigator must articulate that intent to a jury, and the best way to do that is through the subject's own words. In an ideal situation, collateral investigation, including forensics, would reveal what caused the blaze and who might have a motive to start it. However, the interview process often serves as the key to the arson investigation. A fire intentionally set in a wastebasket under a kitchen sink using a match will look the same from an origin-and-cause perspective as an accidental fire from a carelessly discarded cigarette. To this end, an effective interview can mean the difference between a fire remaining unsolved and one with cause clearly determined and the offender under arrest.

Interviews have a distinct rhythm, with give-and-take between the subject and the interviewer. The juvenile typically offers a little, hoping the investigator will feel satisfied. The interviewer takes the available information, then prods to get a little more. However, if the investigator pushes too hard too soon, the interview will end. In the classic scenario, subjects test interviewers to see if they have figured out the real story. The investigator who does not know the truth is at a distinct disadvantage. Therefore, information from the early witness interviews and solid fire scene forensics serve as invaluable tools in the hands of a skilled interrogator.

The young man in the opening scenario provided investigators with an account of what he did during the 12 hours before the fire, at the time of the blaze, and the 12 hours after the incident, known as the "24-hour alibi." The interviewing officer established rapport with him and talked casually. The juvenile talked about an absentee mother, an out-of-state father, and a psychologically distant stepfather.

The interview progressed with the usual give-and-take rhythm. The interviewer kept the subject talking to see how much he would tell. The child started by explaining that he discovered the blaze after it already was burning. Next, he acknowledged his presence in the room when it began. Then, he admitted starting the fire "accidentally." He came up with an alternative theory for how the blaze began—using a lighter, he was looking for a necklace under a couch and did not realize that the flame had ignited the upholstery until it was too late.

Both the 12-year-old subject and the interviewer knew the truth—he intentionally had set the couch on fire. To move him to a complete confession, the investigator relied on the evidence he had developed. The boy finally admitted to using paper and plastic for fuel, then stretching out on the bed in the next room, waiting for the fire to develop before calling it in. His final confession included all of the details, dispassionately told.

Criminals often confess to a crime because they like the interviewer. Investigators also can achieve this result by enhancing their credibility, gained through a desire to become a better interviewer. In this regard, officers can develop skills and knowledge in these critical areas: understanding legal issues involved in interviewing juveniles, collecting background information, applying the IRONIC interview method, and documenting the statement.

Understanding Legal Issues

Investigators must understand legal definitions of ages. For instance, the age of criminal intent—the minimum age juveniles must attain before they can commit a criminal act—varies from state to state. In Massachusetts, once youths reach the age of 7, they "legally" can commit a crime. In Colorado, that age is 10. In Ohio, no statute exists that addresses the minimum age of criminal intent; courts decide this on a case-by-case basis.

The age at which states consider an individual an adult also varies. In Massachusetts, once youths reach 17, they no longer are juveniles and receive treatment as adults under the law. In Ohio, a person becomes an adult at 18.

Investigators also must consider the presence of parents or legal guardians during the interview process. Interviewers must make any parent present an ally, not an adversary. They should sit down with parents prior to the interrogation and alleviate their stress by explaining the importance of talking to their child. The investigator should not use words that increase parents' stress level and make them apprehensive about allowing their child to be interviewed; phrases like "clear up the situation" and "help your child" will prove more effective than harsher words like "court appearances" and "jail time." Opportunities for statements can become forfeited by not including the parents in the process and, thus, losing their cooperation.

Collecting Background Information

Investigators can enhance their investigations by collecting background information. This includes examining databases, running criminal record checks, and visiting the housing court.

> ***A comprehensive, well-balanced approach to this problem can help ensure the safety of the young offenders and the community.***

Also, when documenting background information, investigators should determine if the juvenile takes medication and the specific effects of the drug. The predominant psychiatric diagnosis for juvenile firesetters is attention deficit hyperactivity disorder (ADHD), affecting 38 percent of the sample of 1,241 children in Massachusetts.[18] Youths on medication for ADHD may have memory problems and lose clarity of thinking at a particular time of day, often around 5 p.m. as they "dose down." This can affect the quality of the interview. Knowing the juveniles' medication history and planning the best time of day to interview them can be critical.

Juveniles who engage in setting fires tend to show patterns of more disruptive, aggressive, and delinquent behavior than do other youths. Many of the juveniles may be diagnosed as having conduct disorder or oppositional defiant behavior.[19] Firesetting itself is one of the strongest predictors of this disorder in youths.[20] These juveniles also tend to have difficulties with social interactions and problem solving in social situations.[21] They show a low capacity for solving conflicts in a socially acceptable manner.[22]

Applying the IRONIC Method

Conducting an interview involves a step-by-step process. The IRONIC method serves as an easily remembered pneumonic that identifies the procedures involved in taking any statement: introduction, rapport, opening statement, narrative, inquiry, and conclusion.[23]

In the introduction, officers identify themselves before the interview begins. They can do this easily by showing

credentials, such as a badge or a business card.

Next, rapport requires the interviewer to find some common ground that the juvenile enjoys discussing. Examples include sports, pets, travel, family, or hobbies. This critical phase begins immediately and continues throughout the interview.

Then, the opening statement informs the subject of the reason for the interview. For example, "I am here today because of the fire next door to your house."

Next, the narrative allows the juvenile to provide a full, uninterrupted account of what happened. By allowing the subject to describe the incident, a wealth of information becomes available. The interviewer closely should analyze the juvenile's verbatim words. A written or recorded and transcribed verbal statement allows the interviewer to analyze the account without contaminating it with leading questions.[24] After the completion of the uninterrupted statement, the interviewer asks follow-up questions to determine answers to who, what, when, where, why, and how. The purpose of each interview will dictate the specific types of questions to ask.

Then, the inquiry serves to document the answers to specific questions asked of the interviewee. Investigators should write these questions word-for-word and record the answers verbatim.

Finally, the conclusion wraps up the interview. Interviewers should thank subjects for their time and ask if they will be available for a second interview, if necessary. They also should provide the interviewee with a telephone number for any further contact.

Documenting the Statement

An interview has little value in court if not documented properly; interviewers can do this in a variety of ways. Some examples, all legally sufficient, are listed in ascending order of typical value to judges and juries.

- Investigators write a summary after the interview.
- Investigators write statements and have the subjects sign them.
- Subjects write out their own statements and sign them (investigators should ensure that subjects do not overly minimize their actions).
- Subjects provide statements on audiotape.
- Subjects provide statements on videotape (this method has the advantage of documenting the subjects' words and demeanor during the statements).

Knowledge of a juvenile's background also can help determine the best method of documentation. A dyslexic suspect, for instance, may have trouble reading and writing. Using pen and paper to document the statement may

embarrass the interviewee and shut down the interview. In this case, using a tape recorder or video camera would serve better.

Interviewers should write the date and time of the statement at the top. Juveniles' biographical information, such as name, address, and date of birth, also is recorded, along with their educational level and prior experience within the legal system (thus demonstrating their understanding of it). The subject and parents should sign and date the statement and initial the top and bottom of each page, as well as any corrections made (showing the juvenile's involvement in writing the statement). Also, interviewers must note if the subject took any cigarette or bathroom breaks while providing the statement and if the youth used the phone or had anything to eat or drink; documenting such actions establishes that the statement was not taken under duress, that the juveniles' rights were protected, and that it was given voluntarily. After the completion of the statement, the interviewer should have the juvenile draw a diagram of what occurred or write an apology letter if they admit to the crime.

CONCLUSION

Juvenile firesetters are a specific group of offenders. Successful investigation of these individuals requires knowledge of the patterns of young arsonists, as well as a carefully structured interview approach. Only by identifying juvenile firesetters early can intervention techniques hope to prevent continued, escalating criminal behavior. A comprehensive, well-balanced approach to this problem can help ensure the safety of the young offenders and the community. ✦

> ***"In an ideal situation, collateral investigation…would reveal what caused the blaze and who might have a motive…. However, the interview process often serves as the key…."***

Endnotes

[1] Paul Zipper, "Talking the Talk: Tips and Techniques for Interviewing Juveniles," in *Handbook on Firesetting in Children and Youth*, ed. David J. Kolko (San Diego, CA: Academic Press, 2002).

[2] U.S. Department of Justice, Federal Bureau of Investigation, *Crime in the United States, 2001* (Washington, DC, 2002).

[3] Massachusetts Coalition for Juvenile Firesetter Intervention Programs, *Kids and Fire: Intervention and Education, 2002 Annual Report* (Westport Point, MA, 2002).

[4] David J. Kolko, "Juvenile Firesetting: A Review and Methodological Critique," *Clinical Psychology Review* 5 (1985): 345-376; David J. Kolko, "Research Studies on the Problem," in *Handbook on Firesetting in Children and Youth*, ed. David J. Kolko (San Diego, CA: Academic Press, 2002); Vaughan A. Hardesty and William F. Gayton, "The Problem of Children and Fire," in *Handbook on Firesetting in Children and Youth*, ed. David J. Kolko (San Diego, CA: Academic Press, 2002); and Jeffrey L. Geller, "Arson in Review," *Clinical Forensic Psychiatry* 15, no. 3 (1992): 623-645.

[5] Oregon Office of the State Fire Marshal, *2000 Juvenile Firesetting: Annual Report* (Salem, OR, 2001).

[6] United States Fire Administration, *Children and Fire in the United States: 1994-1997* (Washington, DC, 2000).

[7] Supra note 4 (Kolko, 1985).

[8] K.R. Fineman, "Firesetting in Childhood and Adolescence," *Psychiatry Clinics of North America* 3 (1980): 483-500.

[9] U.S. Department of Justice, Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention, *Female Offenders in the Juvenile Justice System* (NCJ 160941) (Washington, DC, 1996).

[10] G.A. Heath, V.A. Hardesty, P.E. Goldfine, and A.M.Walker, "Childhood Firesetting: An Empirical Study," *Journal of the American Academy of Child Psychiatry* 22 (1983): 370-374; David J. Kolko and A.E. Kazdin, "Matchplay and Firesetting in Children: Relationship to Parent, Marital, and Family Dysfunction," *Journal of Clinical Child Psychology* 19, no. 3 (1990): 229-238; and supra note 3.

[11] Supra note 3.

[12] E.R. Bumpass, F.D. Fagelman, and R. J. Brix, "Intervention With Children Who Set Fires," *American Journal of Psychotherapy* 37 (1983); J. Gaynor and C. Hatcher, *The Psychology of Child Firesetting: Detection and Intervention* (New York, NY: Brunner/Mazel, 1987); David J. Kolko and A. E. Kazdin, "Parent-Child Correspondence in Identification of Firesetting Among Child Psychiatric Patients," *Journal of Child Psychology*

and Psychiatry 29 (1988): 175-184; David J. Kolko and A.E. Kazdin, "Motives of Childhood Firesetters: Firesetting Characteristics and Psychological Correlates," *Journal of Child Psychology and Psychiatry* 32, no. 3 (1991): 535-550; David J. Kolko and A.E. Kazdin, "The Emergence and Recurrence of Child Firesetting: A One-Year Prospective Study," *Journal of Abnormal Child Psychology* 20 (1992): 17-37; and E.B. Saunders and G.A. Awad, "Adolescent Female Firesetters," *Canadian Journal of Psychiatry* 36 (1991): 401-404.

[13] Supra note 10 (Kolko and Kazdin).

[14] Supra note 10 (Kolko and Kazdin).

[15] Brandi Simonsen and Michael Bullis, Institute on Violence and Destructive Behavior, University of Oregon, in partnership with Judy Okulitch and Carol Baumann, Oregon Office of the State Fire Marshal and Oregon Fire Service, *Fire Interest Survey: Final Report* (Salem, OR, 2001).

[16] Supra note 10 (Kolko and Kazdin).

[17] Supra note 12 (Kolko and Kazdin, 1988).

[18] Supra note 3.

[19] Supra note 10 (Heath, Hardesty, Goldfine, and Walker); David J. Kolko, A.E. Kazdin, and E.C. Meyers, "Aggression and Psychopathology in Childhood Firesetters: Parent and Child Reports," *Journal of Consulting and Clinical Psychology* 53 (1985): 377-385; and supra note 12 (Kolko and Kazdin, 1988).

[20] J. Kelso and M.A. Stewart, "Factors Which Predict the Persistence of Aggressive Conduct Disorder," *Journal of Child Psychology and Psychiatry* 27 (1986): 77-86.

[21] Supra note 10 (Heath, Hardesty, Goldfine, and Walker); and supra note 19 (Kolko, Kazdin, and Meyers).

[22] R.G. Vreeland and B.M. Levin, "Psychological Aspects of Firesetting," in *Fires and Human Behaviour*, ed. D. Canter (Chichester, England: John Wiley and Sons, 1980).

[23] For additional information, supra note 1.

[24] For additional information, see Vincent A. Sandoval, "Strategies to Avoid Interview Contamination," *FBI Law Enforcement Bulletin*, October 2003, 1-12.

The authors express their gratitude to Irene Pinsonneault, director of the Massachusetts Coalition for Juvenile Firesetter Intervention Programs, and Susan Adams, retired FBI special agent, for their assistance with this article.

Crime Data

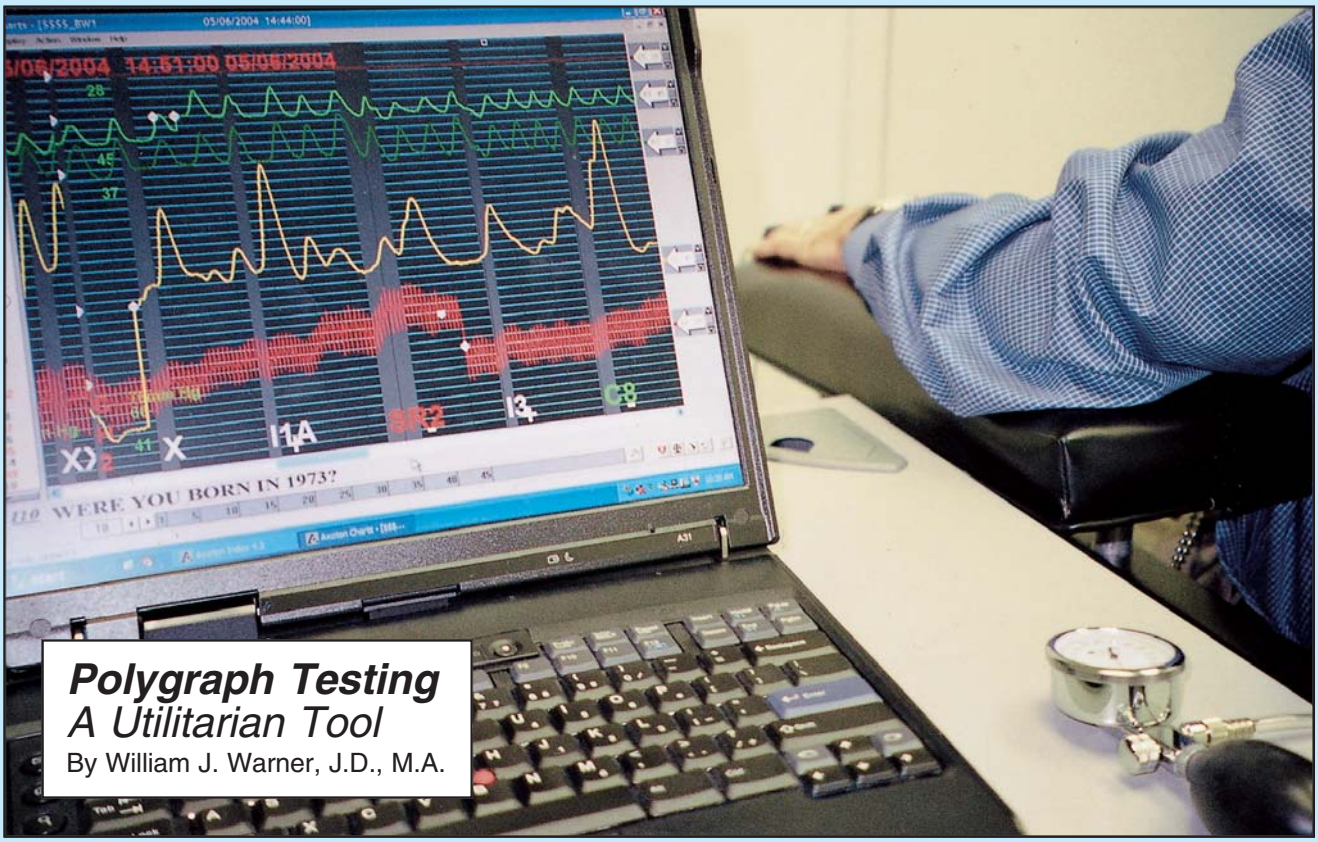
Violent Crime Decreases

According to statistics released by the FBI's Uniform Crime Reporting Program (UCR) in its annual publication *Crime in the United States, 2003*, at nearly 1.4 million offenses, the estimated volume of violent crime in the United States declined 3 percent from the 2002 figure. Murder was the only violent offense to increase (1.7 percent).

Collectively, U.S. cities experienced a 3.9 percent decrease in violent crime compared to 2002. Nonmetropolitan counties saw a 3.7 percent drop and metropolitan counties experienced a decrease of 1 percent.

Offenders used personal weapons (e.g., hands, fists, and feet) to commit more than 30 percent of violent crimes, firearms in 26.9 percent, and knives or cutting instruments in 15.2 percent. Perpetrators employed other weapons in 27.3 percent of offenses.

The UCR Program estimated that in 2003, law enforcement agencies nationwide made 597,026 arrests for violent crime, representing 4.4 percent of the estimated number of all arrests. *Crime in the United States, 2003* is available at *http://www.fbi.gov*.



Polygraph Testing
A Utilitarian Tool

By William J. Warner, J.D., M.A.

Much debate has transpired over the reliability of polygraph testing whether used in criminal, counterintelligence, preemployment, or other venues. In fact, the scientific community has not encouraged its use due to a lack of supporting evidence for reliability and validity.[1] In a 2002 report, the National Academy of Sciences concluded that the accuracy of the polygraph in distinguishing actual or potential security violators from innocent workers proved insufficient to justify reliance on its use in employee security screening in federal agencies.[2]

Critics of the polygraph have sought its discontinuance for years, calling it a "junk science" with no scientific basis.[3] In 1988, the Employee Polygraph Protection Act (EPPA) almost completely abolished the use of polygraph for preemployment and employee screening in the private sector.[4] Although the act exempted federal agencies, those in the federal polygraph community and in numerous intelligence and law enforcement organizations in all jurisdictions, including private examiners, have had to continually battle critics who seek its total abolishment.

The Debate

Time and again, the debate over the use of polygraph testing centers around its reliability and validity (or lack thereof) with little discussion from either side as to its utilitarian component. This is a common oversight neglected in the literature and ignored by those seeking to criticize an investigative technique because it is not always reliable. However, law enforcement investigators who have

a commitment to the public they serve recognize the polygraph's usefulness as a tool for obtaining information not previously known in criminal investigations. Confessions gained as a result of polygraph examinations are admissible as evidence in court, providing investigators have met the rules for admissibility, such as no use of force, threats, or promises.[5] Confessions, admissions (conceding to some aspect of the crime but not the entire crime), and additional information of investigative value gained through such testing come about due to the *utility* of the polygraph and the determination of the examiner, irrespective of the instrument's reliability or validity.

Certainly, reliability and validity are important. Investigators do not want to waste their time with a lie detection technique that yields little more than speculative results. The point is that countless stories have appeared in newsletters and journals advocating the use of the polygraph, but little information has been published on its utilitarian value, or usefulness. Instead, the real mission of such published works seems to rest with discussing only its reliability and validity, avoiding its usefulness as a detection of deception technique.

The utilitarian value of the polygraph might surprise even the strongest critics when it comes to criminal testing and the results the device provides. In a 1996 study of 96 child support cases listed as questionable due to the unknown whereabouts of the father, the researchers informed the mothers that they would use the polygraph to verify the unknown status of the fathers. Following the mere suggestion of polygraph testing, 51 of the mothers came forward with additional information, resulting in the resolution of those cases.[6] Additionally, in 2002, three men confessed to murders following their polygraph tests. During a polygraph pretest, one man confessed to child molestation. When another man was notified that his polygraph had been scheduled, he confessed to shooting his wife. And, after failing a polygraph test, a third confessed to killing his wife.[7]

Every day, investigators from federal, state, and local law enforcement jurisdictions interview suspects, victims, and witnesses to crimes. Their primary goal is to get the truth from these individuals to bring their particular cases to a successful conclusion. Some are highly skilled at getting people to confide in them; others are not. Successful or not, they second-guess themselves and critically review their performances long after concluding their interviews. Their curiosity in these matters is never fully satisfied, and they remain "students of human behavior."[8]

The Theory

Most investigators attend in-service training seminars and conferences focusing on interview and interrogation strategies or detection of deception methodology. Despite the amount of training they receive or their experience levels, most willingly accept assistance to help bring a subject of their investigation in line with the truth. In doing so, they often turn to the polygraph, regardless of its reliability, as a tool to get the information they

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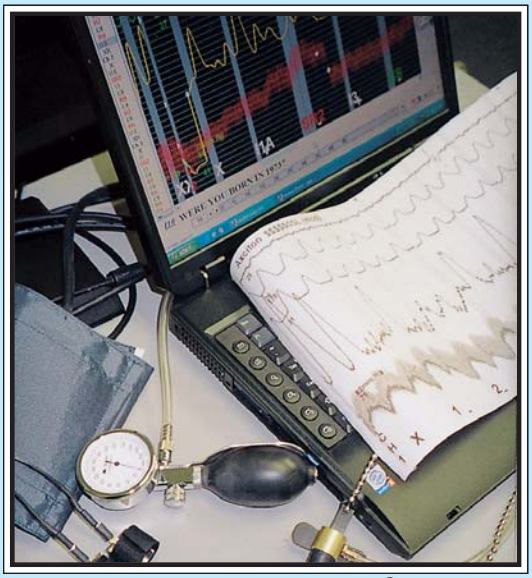
seek. In fact, they ascribe to the theory that the utility of the polygraph frequently will bring them additional useful information not previously known. This theory has proven successful because any technique that examinees *believe* to be a valid test for deception likely can produce deterrence and admissions.[9]

In an effort to further explore this theory as it pertains to polygraph testing in the criminal arena, the FBI's Polygraph Unit conducted an archival research study of 2,641 polygraph examinations from January 1, 2001 through December 31, 2003. All polygraph examinations reviewed were conducted by certified FBI polygraph examiners. The study included examinations yielding deceptive results wherein investigators obtained confessions, admissions, or information of investigative value, as well as those deceptive reports wherein no useful additional information resulted. The nonexperimental study involved the review of existing records, focusing on specific aspects of those in question. Reports pulled for archival review discussed facts, information known prior to the polygraph, and additional information provided, if any, during and after the polygraph. To expose the utilitarian value of the polygraph as used in these criminal cases, the study needed to determine the significance of the polygraph technique on moving individuals from a position of deception to one of nondeception. Although some can argue what constitutes "significance," few would dispute that one out every two individuals found deceptive in a criminal polygraph examination who ultimately provided a confession, admission, or additional information of investigative value could constitute an accurate definition. Such significance certainly would indicate polygraph testing as a worthwhile endeavor to continue as a useful detection-of-deception technique.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Overall, the study showed that out of the 2,641 deceptive criminal polygraph reports reviewed, 1,316 provided no additional useful information. However, 1,325 reports resulted in acquiring confessions, admissions, or information of investigative value. Clearly, the study, solely concerned with the *utilitarian value* of polygraph testing, demonstrated that one out of every two subjects found deceptive by FBI polygraph examiners testing in the criminal arena provided information of value for the time period reviewed. This should encourage those who criticize a detection-of-deception technique that has a long history of success to consider its usefulness as a tool to obtain additional information. If not, perhaps they would do well to ponder a parent's worst nightmare. Your child is abducted and investigators come to you and say, "We have a suspect who we will be giving a polygraph to." Would you be so bold as to reply, "The polygraph technique is unreliable, find my child another way"?

Conclusion

Taking sides in the debate over polygraph testing should not blind those interested in seeking the truth in criminal cases. Polygraph testing can help law enforcement investigators obtain the complete facts and bring the guilty to justice.

Regardless of its validity or reliability, polygraph testing offers investigators another tool they can employ in interviews to help them obtain additional valuable information. In today's world of terrorists and criminals bent on destruction and mayhem, the law enforcement profession must use all of the techniques and strategies available to safeguard American communities. To deprive investigators of a tool that could, more often than not, help them solve crimes or prevent future tragedies demonstrates a lack of understanding that may have grave and far-reaching consequences. ✦

Endnotes

[1] Lawrence S. Wrightsman, *Forensic Psychology* (Belmont, CA: Wadsworth, 2001), 108-109.

[2] National Research Council, Division of Behavioral and Social Sciences and Education, *The Polygraph and Lie Detection: Committee to Review the Scientific Evidence on the Polygraph* (Washington, DC: The National Academies Press, 1996).

[3] Retrieved on January 5, 2005, from *http://www.antipolygraph.org*

[4] James A. Matte, *Forensic Psychophysiology: Using the Polygraph* (Williamsville, NY: J.A.M. Publications, 1996), 83.

[5] Richard O. Arthur, *The Scientific Investigator* (Springfield, IL: Charles C. Thomas, 1965), 27.

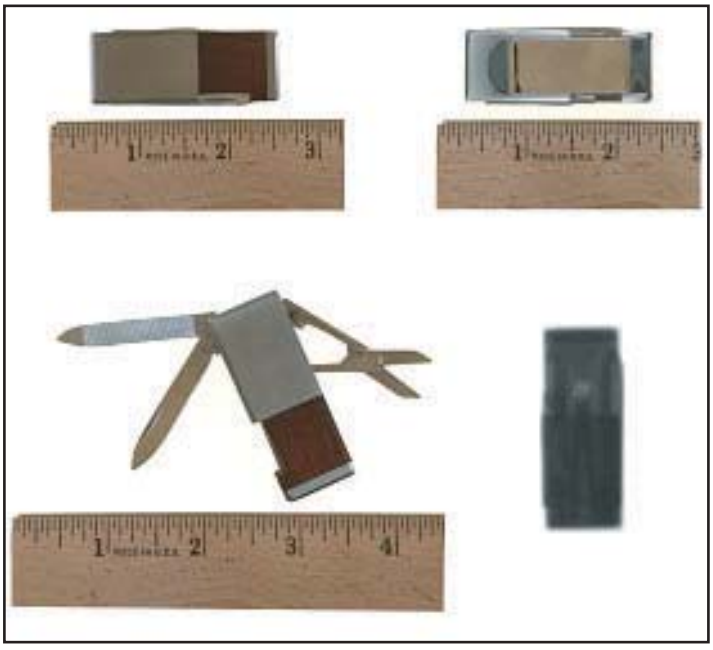
[6] M.T. Hanna and D. Welter, "The Utility of Polygraph Examinations in Unknown Paternity TANF Cases," *Polygraph* 27 (1998): 285-286.

[7] Dean Pollina, "Polygraph in the News," *American Polygraph Association Newsletter* (2002): 20 and 35.

[8] Stanley B. Walters, *Principles of Kinesic Interview and Interrogation* (Boca Raton, FL: CRC Press, 1996), preface.

[9] Supra note 2.

Unusual Weapon



Money Clips

Law enforcement should be aware that offenders may use this unusual weapon, which looks like a money clip. Instead, this metal object conceals a blade, nail file, and scissors.

Bulletin Reports

Terrorism

Terrorism concerns continue to grow throughout the world. In the event of an attack, authorities must recognize the situation and be trained, equipped, and ready to respond. Emergency personnel may face mass casualties, contamination, hazardous materials, trapped victims, a crime scene, and a secondary device targeted at them. The Office for Domestic Preparedness (ODP) has released *Emergency Response to Terrorism: Training for Emergency Responders* (NCJ 205243), a DVD to assist police in the training of first responders to terror attacks. The resource contains all six ODP training videos designed to increase the awareness and knowledge of authorities, enhance their safety, and help them meet challenges involving emergency response to terrorism. Due to public safety concerns, copies are available only to personnel of state and local agencies that provide a written request on department letterhead. Orders should be addressed to Director, VIDEO REQUEST, Office for Domestic Preparedness Support, 810 Seventh Street, N.W., Washington, D.C. 20531.

Corrections

The Bureau of Justice Statistics (BJS) presents *Felony Sentences in State Courts, 2002*, which features statistics for adults convicted of a felony and sentenced in state courts. The data were collected through a nationally representative survey of 300 counties in 2002. Twelve offense categories are reported on and trends from 1994 to 2002 are included that feature the number and characteristics (e.g., age, sex, and race) of adults convicted of felonies and the types (e.g., prison, jail, or probation) and lengths of sentences imposed. This periodic report is published every 2 years. Highlights include the following: drug offenders represented 32 percent of felons convicted in state courts in 2002; state courts sentenced 41 percent of convicted felons to a state prison, 28 percent to a local jail, and 31 percent to straight probation with no jail or prison time to serve; and guilty pleas accounted for 95 percent of felony convictions in state courts in 2002. This report is available online at *http://www.ojp.usdoj.gov/bjs/abstract/fssc02.htm* or by contacting the National Criminal Justice Reference Service at 800-851-3420.

Victims

The Office for Victims of Crime presents *Learning About Victims of Crime: A Training Model for Victim Service Providers and Allied Professionals*, which describes the efforts of Denver Victim Services 2000 (VS2000) in providing training, education, and technology to victim service providers and allied professionals (including faith communities, and the law enforcement and legal professions) and shares lessons learned and knowledge gained during the development and implementation of Denver VS2000. To provide comprehensive, coordinated, and seamless delivery of services, staff applied VS2000's trademark collaboration and innovation to yield a distinct service delivery model to meet the specific needs of victims in Denver. Authored by Carol Watkins Ali and Erin Stark and the fifth in a series that documents the VS2000 model and initiatives, this bulletin encourages replication by others with similar initiatives. It is available electronically at *http://www.ojp.usdoj.gov/ovc/publications/bulletins/VS2000trainingmodel/welcome.html*.

Mental Health

Criminal Justice/Mental Health Consensus Project Report provides 46 policy statements to improve responses to people with mental illness who become involved or risk involvement with the criminal justice system, specific recommendations on practical steps that should be taken to implement each policy, and examples of programs around the country that have taken some of these steps. Reflecting the insights of a bipartisan group of 100 leading criminal justice and mental health policymakers and practitioners, this report addresses the entire criminal justice continuum—contact with law enforcement; pretrial issues, adjudication, and sentencing; and incarceration and reentry. It also discusses improving collaboration and training, building community awareness, measuring and evaluating outcomes, and developing an effective mental health system. This report is available online at *http://consensusproject.org/topics/toc*.

Bulletin Reports is an edited collection of criminal justice studies, reports, and project findings. Send your material for consideration to: *FBI Law Enforcement Bulletin*, Room 201, Madison Building, FBI Academy, Quantico, VA 22135. (NOTE: The material in this section is intended to be strictly an information source and should not be considered an endorsement by the FBI for any product or service.)

Notable Speech

IACP Speech

By Robert S. Mueller III

This is the fourth IACP annual conference I have attended. This is one of my favorite events every year because it gives me the chance to speak to friends and colleagues from around the world.

I want to share a story I sometimes tell graduates of the FBI's National Academy, of which many of you are graduates. It is about building the bonds of teamwork and sharing advice and expertise on cases. And, how, sometimes, teamwork helps solve cases even before leaving the academy.

Just last year, three National Academy students put their training and teamwork to use right at their hotel near Quantico. A 17-year-old burglar was attempting to break into a van nearby. Now, you would think that since he was local, the burglar would have known that might be a bad idea. Instead, this budding criminal mastermind quickly found himself tackled and handcuffed by a Memphis detective, a New York state trooper, and a North Carolina DEA agent.

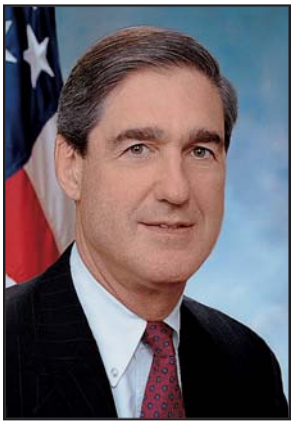
If only all of our cases were so easy to solve. Today, I want to talk about how we are making our jobs easier by working together to protect our communities, our country, and the world.

As a great basketball player once said, "The more we play unselfishly, the more everybody gets involved, the better the flow of the game." And with everybody involved, our teamwork is better than ever. Despite the need for us to reallocate resources to the war on terrorism, violent crime continues to drop. Our streets are safer than they were a decade ago.

Thousands of the officers responsible for these trends are here at this conference today. And on behalf of the FBI and the American people, I want to thank you for all that you have done. Members of the IACP have demonstrated remarkable leadership in the wake of September 11, and our nation is all the better for it.

This morning, I want to talk about three areas where the partnership between the FBI and state, local, and international law enforcement has improved over the past three years. These three areas are first, sharing information; second, improving our capabilities; and third, enhancing cooperation.

First, information sharing. We are sharing what we know in new ways. Indeed, I want to thank the IACP for leading the way in the development of the National Criminal Intelligence Sharing Plan. In the spring of 2002, law enforcement executives attending an IACP summit recognized that local, state, tribal, and federal law enforcement had to do a better job of gathering and sharing intelligence. The participants called for the creation of a nationally coordinated criminal intelligence council that would develop and oversee a national plan.



FBI Director Mueller delivered this speech at the International Association of Chiefs of Police Annual Conference in Los Angeles, California, on November 16, 2004.

In May of this year, their efforts paid off, and Chief Joe Polisar, Attorney General Ashcroft, Mel Carraway, and others unveiled the finished product. This plan is serving as the blueprint for implementing our overall national strategy for intelligence sharing. The FBI is proud to have had the opportunity to work with the IACP on this plan, and we are committed to its full implementation.

One of the key issues identified by those preparing the plan was the need to break through the barriers that hinder information sharing. We have gotten the message. We know how important it is that we share the information we collect with you and your departments. Today, one of our top priorities is improved service to our law enforcement partners around the country.

Last December we opened the Terrorist Screening Center. It has been operating 24 hours a day, 7 days a week ever since. The Center has consolidated an enormous amount of international and domestic terrorist information into a single database. For the first time, federal, state and local law enforcement officials have real-time connectivity to the government's most up-to-date terrorist watchlist. This enables officials to respond quickly when a known or suspected terrorist is encountered during a routine law enforcement stop.

> **"...in addition to sharing information more effectively, we are improving our capabilities."**

To date, the Center has received over 2,000 calls from state and local law enforcement. Over 1,400 of these calls—70 percent—resulted in matches of the individual to a name on the list. These matches generated numerous investigations, many of which are on-going today. For example, in one case, police ran a name of an individual and were prompted to contact the Terrorist Screening Center. As it turns out, the individual was affiliated with a proscribed group and was also under investigation by the FBI for his involvement in a pipe bomb incident. The Center is a powerful tool in the war on terror and a strong link between the FBI, the intelligence community, and state and local law enforcement.

Second, in addition to sharing information more effectively, we are improving our capabilities. We are doing this in three ways—improving technology, improving training and improving our investigative techniques. Through technology, we are developing another strong link between us. The National Law Enforcement Data Exchange system, also known as N-Dex, will revolutionize the way we share information.

N-DEx is our response to requests from law enforcement and the IACP for us to find an answer to the challenge of information sharing. When complete, this will be the first truly national information sharing service. It will collect and process crime data in support of investigations, crime analyses, law enforcement administration, strategic and tactical operations, and national security responsibilities. N-DEx will correlate data from all major FBI databases, such as NCIC and others. For the first time, the FBI will be able to provide a "one stop shopping" experience where combined data can be correlated—all with an initial search response time of about 30 seconds. This will give us the ability to execute nationwide inquiries from a single access point. To identify trends and respond appropriately. To connect multijurisdictional crimes. In short, to provide unprecedented access to information allowing us to link cases, solve crimes, and form broader investigative partnerships.

N-DEx is already being pilot-tested with the West Virginia State Police and police departments in Marietta, Georgia, and Alexandria, Virginia. I

would encourage everyone to stop by the FBI exhibit space at this conference for a free demonstration so you can see for yourselves what this new system will do for all of us. N-DEx is just one of the new ways the FBI is sharing and leveraging the benefits of technology to enhance law enforcement efforts.

Just six years ago, in October 1998, we worked with 20 state and local agencies to create the National DNA Index System. Since then, the Combined DNA Index System, known as CODIS, has helped solve, or aided in more than 18,000 investigations nationwide. This is one of the most important advances in forensic technology. It has allowed us to work together to solve cases that are often decades old.

I want to talk briefly about one of these cases that began back in 1986. In October of that year, a young woman in Maryland was sexually assaulted and murdered in her home. DNA evidence was collected and tested and preserved for the future. Two years later, another woman, out for an early morning jog, was also assaulted and killed. Again, police were unable to charge anyone, but the DNA evidence was preserved. In January 1993, a high school freshman was murdered on her way to school. Near her body, police found an unlit cigarette with saliva possibly from her killer.

Maryland detectives never gave up on any of these cases. And last year they submitted DNA from Alexander Wayne Watson, Jr., an inmate sentenced to life in prison, in 1994, for murdering a mother of two. Eventually, matches came back for the three earlier killings, and it became clear that Watson was a serial killer who preyed upon local women. Thanks to the work of Maryland cold case detectives and CODIS, three families finally knew that the killer of their loved one was safely behind bars.

Aside from technology, we are providing training. One of our most successful efforts has been in training the nation's bomb technicians at the Hazardous Devices School in Redstone Arsenal, Alabama. This September, we dedicated a new, state-of-the-art facility for the school. It provides bomb technicians with the latest tools and techniques for confronting suicide bombers, large vehicle bombs, weapons of mass destruction, and other threats.

Every year, the FBI trains more than 1100 students at the Hazardous Devices School. We provide millions of dollars of equipment to local bomb squads at more than 400 agencies. And all of this equipment is standardized. This means that a bomb tech from California should have no problem operating equipment in Texas, New York, or anywhere else in the United States. Our nation's police and fire departments are the front line of defense against terrorists and criminals. And providing you with training, as well as equipment, is key to our counterterrorism mission.

> **"…the FBI is working with our state and local partners to develop even newer techniques for analyzing evidence and combating crime."**

In addition to training, the FBI is working with our state and local partners to develop even newer techniques for analyzing evidence and combating crime. These include new methods for extracting DNA from bone, identifying latent prints from children, and testing explosives. This year, in partnership with departments in Ohio, Texas, and elsewhere, we are working on flat fingerprint technology, license plate readers, and other tools that will help us track down criminals and better integrate our investigations.

Beyond improving our capabilities, the third way we are strengthening our partnerships is through better cooperation. We have worked hard

to improve cooperation at all levels. For example, FBI squads are working closely with local police to address gang issues across the country.

There are more than 20,000 active gangs in the United States. The gangs are getting bigger. They are getting more organized. And they are getting more dangerous. There were nearly 8,000 gang-related homicides in California alone from 1992 through 2003. People in certain neighborhoods do not feel safe in their own homes—how can they, when at any time, a bullet could come flying through the wall? There are parents who put their children to sleep in the bathtub every night so that they will be safer. Police officers are slain by gang members. And generations of youth are being lost to gang recruiters.

Together, we must address this problem. We must stop their recruiting and arrest their leaders. Cracking down on gangs will help lower homicide rates and make our communities safer. With your on-the-street information and by sharing intelligence, we can work together to cut the head off the dragon–to use our joint resources to target gangs and get them off the streets.

> **"…together, we will continue protecting our country and our citizens."**

By working together with the Los Angeles Police Department and the Los Angeles County Sheriff's Department, we tackled gang problems in the largest housing project in the country—Nickerson Gardens. We are also tackling emerging gang issues on the East Coast. For example, in Virginia, cooperative efforts between the FBI and local law enforcement have led to successful federal prosecutions of more than 70 gang members. Recently, we used RICO statutes there to help us bring down two dangerous Vietnamese gangs.

We are now completing a National Gang Threat Assessment in cooperation with other federal, state, and local partners. This assessment will help us target our anti-gang efforts where they are most needed. With funding that Congress has provided and with your help, we are compiling a gang database. It will provide information and links that can assist our mutual investigative efforts.

What is more, we are working with international partners to address this problem. Just last month, police in El Salvador met with law enforcement officials in Southern California to discuss new ways to share information on multinational gangs. El Salvador's police chief has directed his intelligence officers to provide us with quick access to his agency's gang database.

We are even cooperating better on far continents. FBI Agents are working with our law enforcement partners from Russia to Romania to track down hackers and other cyber criminals. We are joining forces with the Hungarian National Police to tackle organized criminal syndicates. We are gathering intelligence in Iraq and Afghanistan. And we are hunting down terrorists with our counterparts in countries like Pakistan, Morocco, and Indonesia.

As threats continue to evolve, we must evolve with them. In an age where attacks can come from anywhere in the world—from the streets of Detroit to the shores of Yemen—the FBI must be able to call upon a full range of capabilities. We must combine our traditional law enforcement tools with new intelligence tools to prevent attacks. We must combine old-fashioned detective work with state-of-the-art technology. And, most importantly, we must work together both locally and globally.

Together, we are making progress. Terrorists cannot hide forever in mountain ranges and deserts. They have to interact with society, particularly if they intend to strike inside the United

States. They will go shopping and set up bank accounts. They will rent cars. They will buy equipment, make mobile phone calls, set up meetings, and try to cross borders. Each of these activities is an opportunity for us, together, to identify them and stop them from doing harm.

By sharing information, improving our capabilities, and working together, we can and we will succeed. And with that, I will close with the words from a speech President Kennedy was supposed to deliver at the Trade Mart in Dallas, Texas, on November 22, 1963. I quote, "We in this country, in this generation, are—by destiny rather than choice—the watchmen on the walls of world freedom. We ask, therefore, that we may be worthy of our power and responsibility, that we may exercise our strength with wisdom and restraint."

That speech was never delivered. On that day, together, Dallas police officers and FBI special agents answered the call of a grieving nation and undertook the investigation into the killing of President Kennedy.

Nearly 41 years later, together, we are serving as the watchmen on the walls of world freedom. And together, we will continue protecting our country and our citizens. Thank you again for your cooperation, your support, and your leadership. God bless you all. ✦

Book Review

Stress and the Police Officer, second edition, *by Katherine W. Ellison, Charles C. Thomas Publisher, Springfield, Illinois, 2004*.

It is hard to believe that over 20 years have passed since the publication of Dr. Katherine Ellison's first edition of *Stress and the Police Officer*. That pioneer work, written with Lieutenant John Genz of the New Jersey State Police, appeared shortly before the FBI's first National Symposium on Police Psychological Services and documented the fledgling study of stress in law enforcement. It has served countless students and professionals seeking to understand this newly recognized phenomenon.

While her new book is a significant rewrite of its predecessor, Dr. Ellison makes a consistent point in both: "Research on police stress has not kept pace with the research on occupational stress in general. Much remains to be done." On the other hand, her most recent work will add to the knowledge of any administrator, police psychologist, or student of law enforcement. It is extremely well organized and well researched, with two appendices that add to the impact of this text. One, "Resources, Tips, and Gimmicks," identifies useful information for anyone wishing to explore the topic of police stress. A second, a detailed bibliography, provides extensive references for the use of the reader.

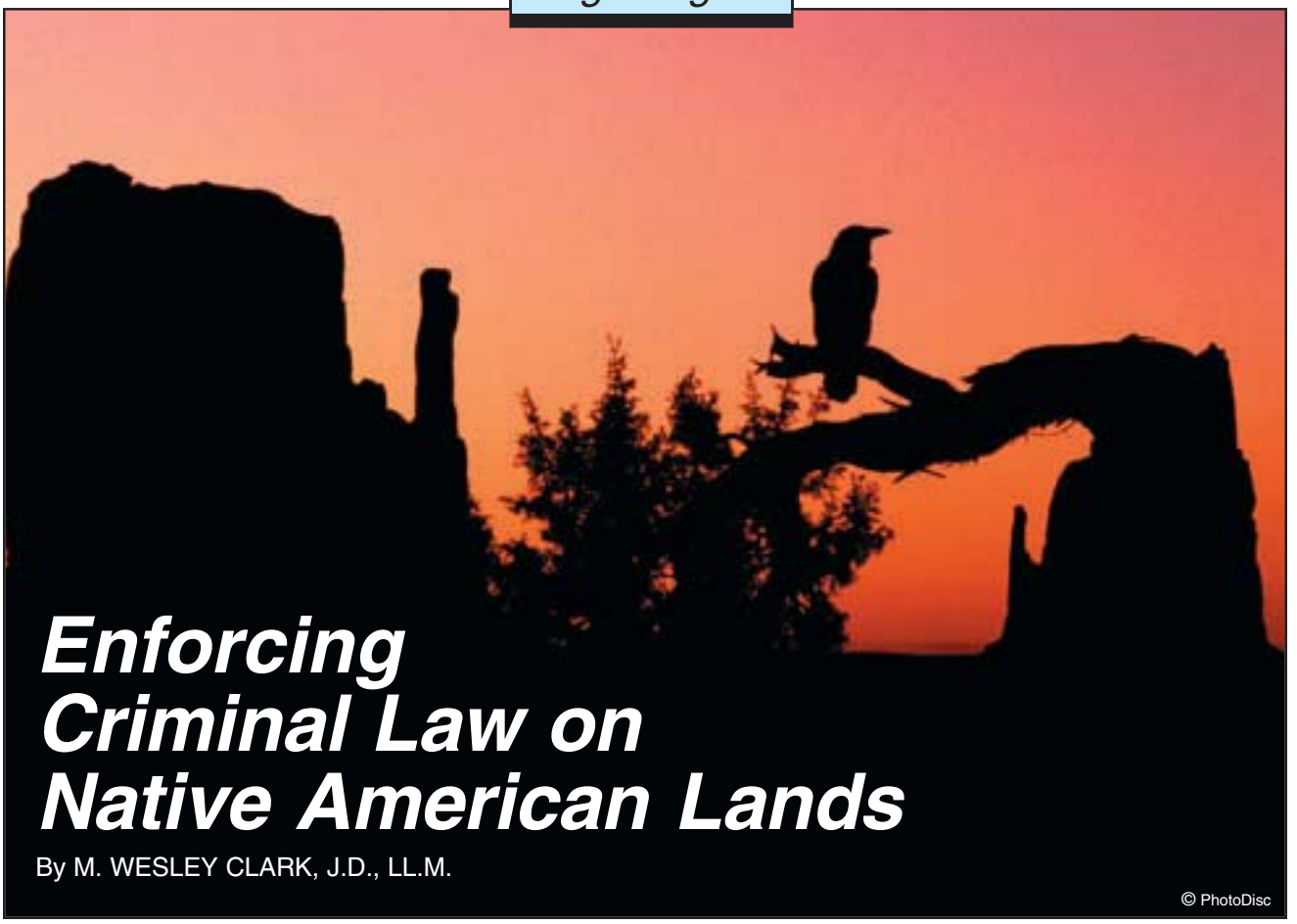
This work, even more than the first edition, is user-friendly and avoids psychological jargon. It easily explains the nature and typical response of an individual to stress while focusing particularly on the nature of stress in law enforcement and unique stressors experienced by special groups within the profession, including civilian personnel and ethnic and racial minority, female, and gay and lesbian officers. She clearly has articulated methods by which anyone connected with law enforcement easily can recognize stress reactions and, more important, has identified practical stress management techniques for the individual.

Two chapters in the book prove especially compelling. First, Dr. Ellison discusses organizational strategies for stress management, emphasizing that police departments *must* be concerned about the quality of management and the reduction of stress. Within this chapter, as well as throughout the book, she offers fair and honest criticism of stress-causing practices seen in many agencies and within the law enforcement culture itself, but outlines clear steps that any department can take to mitigate organizationally caused stress.

Second, she emphasizes the importance of training within an agency. As she notes, "For a program of stress awareness and management to be even minimally effective, it must include more extensive and comprehensive training. It must focus on changes at the organizational and supervisory level in addition to programs for individuals in the lower ranks." Her training chapter, in fact, suggests actions by which an agency could better prepare its personnel to handle stress and, as a result, reduce stress within the agency itself.

Dr. Ellison is a recognized expert in police psychology who has continually "kept up with the times." Her new text provides further evidence of both her dedication to the enhancement of police service and her recognition that this country's law enforcement officers deserve to be treated well.

Reviewed by
James D. Sewell, Ph.D.
Assistant Commissioner
Florida Department of Law Enforcement



Enforcing Criminal Law on Native American Lands

By M. WESLEY CLARK, J.D., LL.M.

Policing in and adjacent to land within "Indian country"[1] is often a complex and, at times, confusing jurisdictional puzzle. Solving this puzzle depends on a variety of factors, including whether the crime is a felony or misdemeanor, whether the subjects and victims are Indians, and whether the crime violates tribal, state, or federal law. Many law enforcement agencies (LEAs) have an interest in the answer to these questions. This article explores the complexities of Indian country jurisdiction, including the role of state, local, and federal law enforcement. In addition, the article discusses the various judicial venues in which crimes occurring within Indian country may be prosecuted.

TRIBAL SOVEREIGNTY

The confusion created by Indian country jurisdiction is an outgrowth of this nation's structure of government, with the federal government and the states existing as sovereigns. The picture becomes further complicated when factoring in the sovereignty retained by Indian tribes. The federal government's authority with respect to federal offenses of *general* applicability, such as the Controlled Substances Act (CSA),[2] is rather straightforward. Such federal crimes of *general* applicability committed by anyone (including Indians) can be investigated by U.S. LEAs within Indian country just as they can against anyone anywhere else within the United States.[3]

The picture with respect to state and local offenses (as well as federal offenses, which are *not* generally applicable

throughout the U.S.) is a bit more blurry. This article, including the appended jurisdictional charts, is intended to dispel some of that lack of clarity.

Any uncertainty about the extent of LEA authority may stem from the fact that relations between the federal government and Indian tribes are in many instances governed by treaty. This, in turn, may lead to the erroneous conclusion that Indian reservations are completely sovereign in much the same way that nation-states are sovereign.[4]

In an effort to provide clarity with respect to the scope of federal jurisdiction in Indian country, Congress enacted The Indian General Crimes Act, found at Title 18, Section 1152, U.S. Code.[5] This statute provides that acts that would be crimes on an enclave are also crimes if committed in Indian country *unless* the crime is by one Indian against another or if an Indian violator already has been punished in accordance with tribal law. In the event the crime is committed by one Indian against another, the Indian Major Crimes Act,[6] codified at Title 18, Section 1153, U.S. Code, may apply. Further adding to the confusion, and despite the plain wording of the Indian General Crimes Act, the U.S. Supreme Court has held that absent treaty provisions to the contrary, *state* courts have exclusive jurisdiction over Indian country crimes involving *only* non-Indians that would, except for involving non-Indians, fall within the Indian General Crimes Act.[7] However, when the defendant is an Indian but the victim is not, or where the defendant is a non-Indian but the victim is an Indian, federal jurisdiction is generally thought to operate to the exclusion of the states.[8]

> ***"Policing in and adjacent to land within "Indian country" is often a complex and, at times, confusing jurisdictional puzzle."***

Mr. Clark is a senior attorney in the Domestic Criminal Law Section, Office of Chief Counsel, DEA.

The Eighth Circuit Court of Appeals in *United States v. Blue*[9] illustrates the multi-jurisdictional dynamic associated with Indian country crimes. Raymond Blue, an "enrolled member" of the Turtle Mountain Band of Chippewa Indians, was convicted of a violation under the CSA in U.S. district court for making a number of marijuana sales on a North Dakota Indian reservation to a Bureau of Indian Affairs (BIA) agent. The sales also violated the Turtle Mountain Tribal Code. The defendant argued that the Indian General Crimes Act and the circumstances surrounding the acts complained of dictated that the offenses could only be heard in a tribal court. The government countered, asserting that both the tribal and federal courts could properly try Blue for his marijuana sales.

The Eighth Circuit rejected the defendant's contention, stating the Indian General Crimes Act and its exceptions "do not extend or restrict the application of *general* federal criminal statutes to Indian reservations. The statute applies only to federal enclave laws and does not encompass federal laws that make actions criminal *wherever* committed."[10]

POLICING WITHIN INDIAN COUNTRY

The complications with respect to jurisdiction in Indian country arise because there are four kinds of "police" that one may find on an Indian reservation: tribal police, the BIA, other federal law enforcement, and state and local law enforcement.[11] Historically, it was considered a federal government responsibility to provide police services for Indians. This protection has been provided by BIA personnel. Over time, the role of the federal government as direct provider came to be seen as paternalistic, and, in 1975, Congress passed the Indian Self-Determination and Education Assistance Act.[12] Among other things, the act enabled the tribes to provide their own police protection via "638 contracts"[13] entered into with the BIA and funded by the United States (this is the most common configuration), or they can elect to retain BIA police services. Many tribes find that the contract arrangement is cumbersome due to the many requirements imposed on them by the government.[14] Many tribes, especially the wealthier ones (particularly those with a robust and successful gaming industry), deliberately forgo the 638 contracting mechanism and elect to completely fund the tribal forces with their own monies. Another variant is a combination approach whereby tribal police are funded by some 638 contracts and some tribal monies.

By statute,[15] state and local law enforcement personnel were empowered to enforce state criminal law within all Indian country found in California, Nebraska, and Wisconsin and within a large segment of the Indian country in Alaska,[16] Minnesota,[17] and Oregon.[18] When interpreting this statute, courts have held that it does not divest tribes and tribal police of their authority "to enforce tribal criminal law against Indians and to detain and turn over to state or local authorities non-Indians who commit suspected offenses on the reservation."[19] The Indian General Crimes Act and the Indian Major Crimes Act are thus inapplicable in these Indian country state law-enforced areas.[20] This presents an anomalous situation: state criminal laws apply with respect to all offenses committed within most Indian country that is located in just six states but not within the remainder.[21] The first version of this statute related to the assumption of jurisdiction by California, Minnesota, Nebraska, Oregon, and Wisconsin, which assumption was not seemingly objected to by the tribes involved. The reason for the statute's enactment was that the five affected states:

> lack[ed] jurisdiction to prosecute Indians for most offenses committed on Indian reservations or other Indian country, with limited exceptions. The applicability of Federal criminal laws in States having Indian reservations is also limited. The United States district courts have a measure of jurisdiction over offenses committed on Indian reservations or other Indian country by or against Indians, but in cases of offenses committed by Indians against Indians that jurisdiction is limited to the so-called 10 major crimes....[22]

As a practical matter, the enforcement of law and order among the Indians in Indian country has been left largely to the Indian groups themselves. In many States, tribes are not adequately organized to perform that function; consequently, there has been created a hiatus in law enforcement

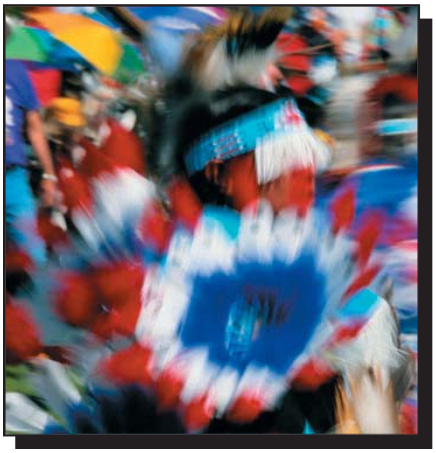
> ***"A fundamental right in the sovereignty of an Indian tribe is the power to exclude trespassers from the reservation."***

> authority that could best be remedied by conferring criminal jurisdiction on States indicating an ability and willingness to accept such responsibility.... [The five states] indicated their willingness to accept the proposed transfer of jurisdiction [and] Indian groups in those States were, for the most part, agreeable to the transfer....[23]

In point of fact, however, this congressionally mandated approach to jurisdiction was unpopular with many Indians as the states affected by this statute gained criminal jurisdiction with regard to offenses committed by or against Indians in Indian country without regard for the views of the tribes located within those states. This legal framework later was changed by statute in 1968 to require tribal consent prior to any assumption of criminal jurisdiction by a state. The precondition of consent applies only to postenactment state assumption of criminal jurisdiction and leaves the pre-1968 legal regime in place with respect to those states that assumed criminal jurisdiction prior to 1968.[24]

Tribal Police

As indicated earlier, most tribal police are under a "638 contract" with the BIA by which the BIA funds the tribal police "to perform the functions of the Branch of Criminal Investigations."[25] Tribal police do not, as a matter of inherent sovereignty, have jurisdiction over non-Indians within a reservation. However, under appropriate circumstances, the authority of a tribal police officer to stop and search a nonmember of the tribe while investigating an on-reservation



violation of state or federal law has been affirmed. Additionally, evidence obtained as a result of such action may be admissible in a state or federal prosecution.[26]

A fundamental right in the sovereignty of an Indian tribe is the power to exclude trespassers from the reservation. The tribe's police may effectuate this power. Subsumed within this power of exclusion is the authority, if otherwise permitted by the tribe, to deliver those trespassing violators of state or federal law, including non-Indians, to the appropriate authorities.[27]

BIA

The Secretary of the Interior, acting through the BIA,[28] is responsible for providing, or for assisting in the provision of, law enforcement services in Indian country. The organization within the BIA statutorily responsible for carrying out these functions is the Division of Law Enforcement Services (DLES),[29] which, through its Branch of Criminal Investigations (BCI), has responsibility for investigating cases involving violations of the Indian General Crimes Act and the Indian Major Crimes Act committed within Indian country.[30] However, the statute specifically states that the BCI is not primarily responsible for the routine law enforcement activities of the BIA in Indian country.[31] The BCI's responsibility is caveated because it is carried out "under [an] inter-agency agreement...reached between the [Interior] Secretary and appropriate officials of the Department of Justice."[32] With tribe approval, the DLES also may enforce tribal law.

Other Federal Law Enforcement

Although the FBI has jurisdiction to investigate Indian country violations of the Indian General Crimes Act and the

Types of Indian Police Departments and Their Characteristics, 1995

Type of Law Enforcement Program	Public Law 93-638	BIA	Self-Governance	Tribally Funded	Public Law 83-280
Number	88	64	22	4	N/A
Administered by	Tribe	Federal government	Tribe	Tribe	State or local law enforcement agencies
Officers are employees of	Tribe	Federal government	Tribe	Tribe	State or local law enforcement agencies
Funding	Federal (often with tribal contribution)	Federal government	Tribe	Tribe	Primarily state and local entities

Source: Policing on American Indian Reservations, supra note 11 at 7 ("Exhibit 1").

Indian Major Crimes Act,[33] as a practical matter, by the time the FBI is able to respond, in all likelihood "some investigation will have been undertaken by tribal or [BIA] police" and, as a consequence, "United States Attorneys are encouraged and authorized to accept investigative reports directly from tribal or BIA police[.]"[34]

Hybrid Policing

As a July 2001 report prepared for the National Institute of Justice noted, "[t]o this already complicated picture, we must add several more possibilities. First, tribes can contract with the BIA for individual police functions. Therefore, some departments will have a tribal patrol function and a BIA criminal investigation function."[35]

TRIALS FOR OFFENSES OCCURRING WITHIN INDIAN COUNTRY

Tribal Court

As an initial observation, the Bill of Rights within the U.S. Constitution does not in and of itself apply to the Indian tribes.[36] However, many rights similar to those provided for within the Bill of Rights have been extended to Indian tribes by virtue of the Indian Civil Rights Act of 1968 (ICRA).[37] Through the operation of the ICRA, Indian courts have been established, but they are limited in what criminal offenses they handle. Such courts are restricted to misdemeanors inasmuch as they can mete out punishment no harsher than a 1-year confinement, a $5,000 fine, or both.[38] Further, they have no jurisdiction over non-Indians,[39] but they do have jurisdiction over Indians of a different tribe.[40]

An Indian convicted before and punished by a tribal court for a federal enclave offense occurring in Indian country may not subsequently be tried in federal court for conduct arising from the same set of facts.[41] However, this same double jeopardy prohibition does not appear in the Indian Major Crimes Act and, hence, does

not apply if the follow-on prosecution in federal court is for a "major crime." It is an open question, however, whether an Indian could be tried in federal court following a conviction based upon the same facts in a court of Indian offenses, often referred to as a "CFR court."[42]

CFR Courts

Tribes that do not operate tribal courts typically have, by default, "CFR courts." The rules of criminal procedure for CFR courts are set out at Title 25, Code of Federal Regulations (CFR), Section 11.300, *et seq*. The regulations are intended "to provide adequate machinery for the administration of justice for Indian tribes in those areas of Indian country where tribes retain jurisdiction over Indians that is exclusive of state jurisdiction but where tribal courts have not been established to exercise that jurisdiction."[43] Offenses triable before these courts also are delineated within the regulations at section 11.400, *et seq*. By regulation, these courts may not adjudge periods of confinement for more than 6 months nor a fine more than $500.[44]

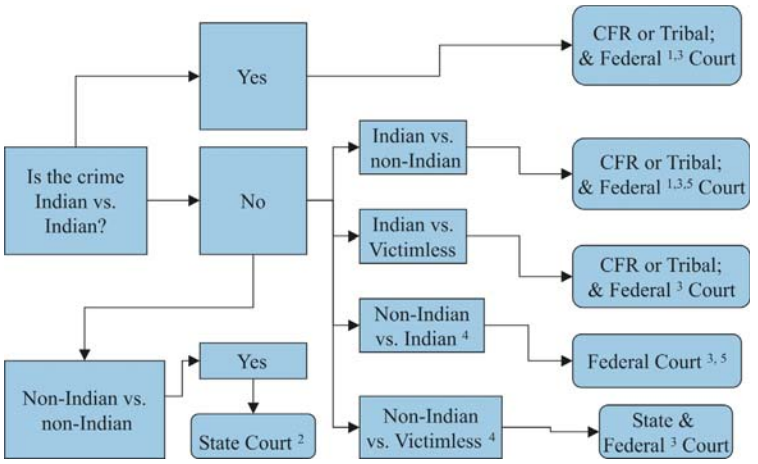
State Courts

State courts, in some instances, may have concurrent jurisdiction over both Indian offender and Indian victim offenses committed within Indian country. To determine this, a first place to look is Title 18, Section 1162, U.S. Code, which sets forth the areas of Alaska, California, Minnesota, Nebraska, Oregon, and Wisconsin where those states have "exclusive" jurisdiction (i.e., state areas where the Indian General Crimes Act and the Indian Major Crimes Act are inoperative.[45]) As noted above, state laws also apply (sometimes concurrently with the federal government) by virtue of several state-specific statutes to offenses committed by or against Indians in all or discrete parts of New York, Kansas, North Dakota, and Iowa.[46] Additionally, and despite the plain wording of the Indian General Crimes Act, the U.S. Supreme Court has ruled that states have exclusive jurisdiction with regard to violations of federal enclave laws committed within Indian country that do not involve Indians.[47]

Federal Courts

The federal district courts have jurisdiction to try: 1) anyone who commits a federal

General Rules — Indian Country Crime Jurisdiction
(Excluding 18 U.S.C. § 1162, State-, and Tribal-Specific Statutory Circumstances)



[1] Major Crimes, 18 U.S.C. § 1153.
[2] *United States v. McBratney*, 104 U.S. 621 (1882).
[3] Federal crimes of general applicability, such as Title 21 offenses, are always prosecutable in federal court.
[4] Tribal courts have no jurisdiction over non-Indian offenders, *Olipahnt v. Suquamish Indian Tribe*, 435 U.S. 191 (1978).
[5] Federal enclave offenses, see 18 U.S.C. § 1152, and Assimilative Crime Act violations, 18 U.S.C. § 13.

enclave offense, to include personal or property offenses, occurring within Indian country and who are not first punished by a tribal court; 2) any Indian who commits a "major" offense within Indian country listed in the Indian Major Crimes Act; 3) anyone who commits an offense involving violations of those federal statutes of general applicability, such as the CSA; and 4) anyone who commits a crime peculiarly federal in nature, such as an assault upon a federal officer.

VICTIMLESS CRIMES COMMITTED BY NON-INDIANS

The applicability of statutes relating to criminal jurisdiction with respect to offenses occurring within Indian country depend on whether or not the victim and the violator are Indians. Victimless crimes committed by non-Indians only add to the complexity of Indian country criminal law because the jurisdictional statutes relating to Indian country offenses are silent concerning this violation subcategory. Just as state courts have exclusive jurisdiction with regard to Indian country federal enclave law violations involving only non-Indians,[48] the U.S. Department of Justice, through the Office of Legal Counsel (OLC) has offered guidance suggesting that states have exclusive jurisdiction with regard to victimless offenses committed by non-Indians.[49] However, it is uncertain how this position should be reconciled with jurisdiction relating to federal crimes of general applicability, such as the CSA, or for victimless state offenses that can be "imported" via the Assimilative Crimes Act (ACA) to federal district court.

> ***"...the Bill of Rights within the U.S. Constitution does not in and of itself apply to the Indian tribes."***

The OLC does caveat this last conclusion to a degree, remarking that "[where], however, a particular offense poses a direct and immediate threat to Indian persons, property, or specific tribal interests, federal jurisdiction continues to exist, just as in the case with regard to offenses traditionally regarded as having as their victim an Indian person or property."[50] Elaborating, OLC continues that "[i]n the absence of a true victim, unless it can be said the offense particularly affects an Indian or the tribe itself, *McBratney* would control, leaving the states the exclusive jurisdiction to punish offenders charged with 'victimless' crimes."[51]

In such an instance where offenses "particularly affect an Indian or the tribe itself," OLC argues, the federal government would share jurisdiction concurrently with the states. Such offenses fall into four categories and include those "crimes calculated to obstruct or corrupt the functioning of tribal government."[52] The second group (i.e., ones that also "may directly implicate the Indian community") are "consensual crimes committed by non-Indian offenders in conjunction with Indian participants, where the Indian participant, although willing, is within the class of persons which a particular State statute is specifically designed to protect."[53] The third class of offenses where the federal jurisdiction lies concurrently with the states "involve the sort of threat...where an Indian victim may in fact be identified," such as "reckless endangerment, criminal trespass, riot, or rout, and disruption of a public meeting or worship service conducted by the tribe."[54] The last class of crimes that "particularly affect an Indian or tribe itself" are those that address "conduct that is generally prohibited because of its ill effects on society at large and not because it represents a particularized threat to specific individuals" but which

"nevertheless so specifically threatens or endangers Indian persons or property."[55]

CONCLUSION

Although the fabric of both the policing and criminal court jurisdictions within Indian country is a crazy quilt—extremely convoluted and certainly not intuitive—federal law enforcement agencies clearly have the authority to venture upon reservations to investigate violations of the U.S. Code that apply to federal enclaves, crimes that are enumerated in the Indian Major Crimes Act, state offenses that are incorporated by operation of the Assimilative Crimes Act, those crimes having a significant federal nexus, and, finally, those federal laws that apply generally throughout the United States. That said, states also have investigative interests, largely based on federal statutes, and the significant role of the tribal police also must be considered. Lastly, it would be prudent to deconflict and coordinate any law enforcement activity slated to take place within Indian country with the tribal, BIA, other federal, or state and local law enforcement authorities that police the reservations. ✦

Endnotes

[1] "Indian country" is defined at Title 18 U.S.C. § 1151 to mean, with limited exceptions, "(a) all land within the limits of any Indian reservation under the jurisdiction of the United States Government..., (b) all dependant Indian communities within the borders of the United States..., (c) all Indian allotments...." Note for the sake of consistency with statutory terminology, "Indian" will be used in place of the more current term "Native American."

[2] Title 21 U.S.C. § 801 *et seq.*

> ***"...states have exclusive jurisdiction with regard to violations of federal enclave laws committed within Indian country that do not involve Indians."***

[3] Not surprisingly, every general rule has a caveat, although this one with regard to the CSA is limited: Indians can use, possess, or transport peyote for "bona fide traditional ceremonial purposes in connection with the practice of a traditional Indian religion." Title 42 U.S.C. § 1996a(b)(1). Further, Title 21 C.F.R. § 1307.31 provides that "[t]he listing of peyote as a controlled substance in Schedule I does not apply to the nondrug use of peyote in bona fide religious ceremonies of the Native American Church, and members of the Native American Church so using peyote are exempt from registration." Peyote is listed at Schedule I at Title 21 C.F.R. § 1308.11(d)(22). *See generally* Jose de Codoba, *Down South in Texas Scrub, "Peyoteros" Stalk Their Elusive Prey,* Wall St. J., May 12, 2004.

[4] "Indian tribes are recognized as quasi-sovereign entities that may regulate their own affairs except where Congress has modified or abrogated that power by treaty or statute." *United States v. Begay*, 42 F.3d 486, 498 (9th Cir. 1994), *cert. denied*, 516 U.S. 826 (1995). Tribes are "limited sovereigns, necessarily subject to the overriding authority of the United States, yet retaining necessary powers of internal self-governance." *Duro v. Reina*, 495 U.S. 676, 685 (1990).

[5] "[T]he general laws of the United States as to the punishment of offenses committed in any place within the sole and exclusive jurisdiction of the United States...shall extend to Indian country. This section shall not extend to offenses committed by one Indian against the person or property of another Indian, nor to any Indian committing any offense in Indian country who has been punished by the local law of the tribe, or to any case where...the exclusive jurisdiction over such offenses is or may be secured to the Indian tribes respectively."

Title 18 U.S.C. § 1152 is also known as the "General Crimes Act," the "Indian Country Crimes Act," or the "Indian General Crimes Act." As noted, it provides that the "general laws" extending to Indian country are those federal crimes applicable "within the sole and exclusive jurisdiction of the United States," (i.e., within the "special maritime and territorial jurisdiction of the United States," a term defined at Title 18 U.S.C. § 7). These "general laws" so applied are sometimes referred to as "federal enclave laws," and, as a result, the "General Crimes Act" is also known as the "Federal Enclave Act," *United States v. Brisk*, 171 F.3d 514, 519 (7th Cir.), *cert. denied*, 528 U.S. 860 (1999). In addition to the application of federal enclave laws within Indian country, the "Assimilative Crimes Act," at Title 18 U.S.C. § 13, permits a federal court to borrow a state's criminal laws in instances where there is no federal law proscribing an offense committed on an enclave within that state.

[6] To ensure that serious Indian-on-Indian crimes would not go unpunished and in strong reaction to the "1883 Supreme Court case *Ex Parte Crow Dog* [109 U.S. 566 (1883)], in which the Court declared that the United States could not prosecute intra-tribal crimes committed on tribal land," James Winston King, *The Legend of Crow Dog: An Examination of Jurisdiction Over Intra-Tribal Crimes Not Covered by the Major Crimes Act,* 42 Vand.L.Rev 1479, 1480 (1999), Congress passed the "Major Crimes Act" also known as the "Indian Major Crimes Act" (a list proscribing 14 serious offenses), Title 18 U.S.C. § 1153, subsequent to the passage of Title 18 U.S.C. § 1152.

[7] *Duro*, *supra* note 4 at 680 n.1 [(citing *United States v. McBratney*, 104 U.S. 621 (1882)]; *New York ex rel. Ray v. Martin*, 326 U.S. 496, 499-500 (1946). Federal crimes of *general* applicability apply throughout the United States, regardless of where committed and by whom, can be investigated by federal LEAs and can be tried in U.S. district court. This is because such crimes are not federal enclave crimes.

[8] 3 Op.Off.Legal Counsel 111, 118-119 (1979). *See also State v. Larson,* 455 N.W.2d 600 (S.D. 1990) (Court rebuffs state argument that it has prosecutive jurisdiction concurrent

with federal government to prosecute simpler, misdemeanor assault committed by non-Indian against Indian in Indian country).

[9] 722 F.2d 383 (8th Cir. 1983).

[10] *Id.* at 384 (emphasis added, citations omitted). A number of circuits have reached the same conclusion. *See Begay*, *supra* note 4 at 500. ("Ninth Circuit law clearly allows Indians to be charged under federal criminal statutes of nationwide applicability if the charge is not otherwise affected by federal enclave law (e.g., the Major Crimes Act § 1153...."); *United States v. Yannott*, 42 F.3d 999, 1004 (6th Cir.), *cert. denied,* 513 U.S. 1182 (1995) (following the Eighth Circuit's lead in *Blue*, *supra* note 9, the court held "that § 1152 and its exceptions only apply to federal laws where the situs of the crime is an element of the offense; § 1152 and its exceptions do not affect application of general federal criminal statutes to Indian reservations.... Furthermore, [§ 1153] does not strip the federal courts of jurisdiction of those crimes not enumerated therein; in fact, federal courts retain jurisdiction over violations of federal laws of general, nonterritorial applicability"); *Brisk*, supra note 5 at 520. *Contrast United States v. Markiewicz*, 978 F.2d 786, 799 (2d Cir. 1992), *cert. denied* 506 U.S. 1086 (1995) ("*Indian against Indian crimes occurring in Indian country*—§ 1153 provides for Federal jurisdiction over the 13 [now, 14] enumerated offenses. Jurisdiction over other offenses rests with the tribe. *Exceptions*—the above pattern is subject to two overriding exceptions. First, some Federal laws have ceded to certain States complete or concurrent criminal jurisdiction over certain Indian country. The second overriding exception is for crimes that are peculiarly Federal. Thus there is federal jurisdiction when the offense is one such as assaulting a federal officer...." *citation omitted; quoting from* H.R. Rep. No. 94-1038 (1976), *reprinted in* 1976 U.S.C.C.A.N. 1125, 1127); *contrast also United States v. Miller*, 26 F.Supp.2d 415, 427 (N.D.N.Y. 1998).

[11] There are more than 200 police departments operating in Indian country. Two, those of the Navajo Nation and the Oglala Sioux Tribe, have police forces of 100 or more officers, and taken together they serve roughly 15 percent of all Indian country residents. U.S. Department of Justice, Office of Justice Programs, National Institute of Justice, *Policing on American Indian Reservations* v-vi (2001), retrieved on October 20, 2004, from *http://www.ncjrs.org/pdffiles1/nij/188095.pdf.*

[12] Pub.L.No. 93-638, 88 Stat. 2203 (1975), *codified at* 25 U.S.C. § 450 *et seq*. "As part of its policy of noninterference with tribal self-governance, Congress enacted the Indian Self-Determination Act of 1975, which allows the [BIA] to enter into contracts with tribes under which the tribe administers programs that were previously controlled by the BIA. The Act was passed because 'the prolonged Federal domination of Indian service programs has served to retard rather than enhance the progress of Indian people and their communities by depriving Indians of the full opportunity to develop leadership skill crucial to the realization of self-government....'" Sandra Schmieder, *The Failure of the Violence Against Women Act's Full Faith and Credit Provision in Indian Country: An Argument for Amendment,* 74 U.Colo.L.Rev. 765, 781-82 (2003), *quoting from* 25 U.S.C. § 450(a)(1)."

[13] These contracts get their name from the statute's public law number, *see* note 12, *supra*. "After consultation with the Attorney General of the United States, the [Interior] Secretary may prescribe...regulations relating to...the consideration of applications for contracts awarded under the Indian Self-Determination Act to perform the functions of the Branch of Criminal Investigations." Title 25 U.S.C. § 2805.

[14] The Departments of Justice and the Interior entered into a 11/22/1993 memorandum of understanding. *See* Department of Justice Criminal Resource Manual (CRM) § 676, retrieved on April 12, 2004, from *http// www.usdoj.gov/usao/eousa/foia_reading_ room/usam/title9/crm00676.htm,* which provides at para. IV.4 that "[a]ny contracts awarded under the Indian Self-Determination Act to perform the function of the BIA, Branch of Criminal Investigators [*sic*], must comply with all standards of the Branch of Criminal Investigators [*sic*] including the following [15 requirements as set forth at para IV.4a-o]." These requirements for the tribal police include having police officer certification, completing the basic criminal investigator course at the Federal Law Enforcement Training Center or equivalent, and receiving compensation comparable to BIA investigators, among others.

[15] Title 18 U.S.C. § 1162.

[16] Alaska has criminal jurisdiction over all Indian country within the state "except that on Annette Islands, the Metlakatla Indian community may exercise jurisdiction over offenses committed by Indians in the same manner in which such jurisdiction may be exercised by Indian tribes in Indian country over which State jurisdiction has not been extended." Title 18 U.S.C. § 1162(a).

[17] Minnesota has criminal jurisdiction over all Indian country within the state "except the Red Lake Reservation." *Id*.

[18] Oregon has criminal jurisdiction over all Indian country within the state "except the Warm Springs Reservation." *Id.* Note that Pub.L.No. 83-280, § 2(a), 67 Stat. 588 (1953), was codified at Title 18 U.S.C. § 1162(a). Because the six states just mentioned in the main text (Alaska, California, Minnesota, Nebraska, Oregon, and Wisconsin) are directed by § 1162(a), they "*shall have* jurisdiction over offenses committed by or against Indians in the areas of Indian country" (emphasis added), they are sometimes said to have "mandatory Pub.L.No. 83-280 jurisdiction" as opposed to the "optional Pub.L.No. 83-280 jurisdiction" afforded by 25 U.S.C. § 1321(a).

[19] *Cabazon Band of Mission Indians v. Smith*, 34 F.Supp.2d 1195, 1200 (C.D. Calif. 1998).

[20] Title 18 U.S.C. § 1162(c).

[21] It should be pointed out that Indian country is not present in each of the remaining 44 states but in just 34 of the continental states; most of it is west of the Mississippi River. Policing on American Indian Reservations, *supra* note 11, at 5. Note that two states—Kansas and New York—apply their state laws to Indian country by virtue of state-specific statutes, and some states apply their criminal laws to Indian country by way of tribe/reservation-specific statutes. In the case of New York, this authority is exercised concurrently with the federal government, *United States v. Cook*, 922 F.2d 1026, 1032-33 (2d Cir.), *cert. denied*, 500 U.S. 941 (1991). That Kansas exercised jurisdiction concurrently with the federal government is evidenced by the statutory language itself, which proclaims that Title 18 U.S.C. § 3243, the Kansas Act, "shall not deprive the courts of the United States of jurisdiction over offenses defined by the laws of the United States committed by or against Indians on Indian reservations." *See Negonsott v. Samuels*, 507 U.S. 99 (1993). *See also* Pub.L.No. 79-394, 60 Stat. 229 (1946) (North Dakota-criminal jurisdiction over offenses committed by or against Indians on Devils Lake Indian Reservation) and Pub.L.No. 80-846, 62 Stat. 1161 (1948) (Iowa - criminal jurisdiction over offenses committed by or against Indians on the Sac and Fox Indian Reservation).

[22] Compare Title 18 U.S.C. § 1153.

[23] H.Rep.No. 848 (1953), *reprinted in* 1953 U.S.C.C.A.N. 2409, 2411-12. Note that subsequent to 1953 most of the Indian country within Alaska ("All Indian country within the State, except that on Annette Islands....") was added to Title 18 U.S.C. § 1162.

[24] Pub.L.No. 90-284, § 401(a), 82 Stat 73, 78 (1968), *codified at* 25 U.S.C. § 1321(a).

"This title [title IV of which § 401(a) is a part] repeals section 7 of Public Law 280, 83d Congress (67 Stat. 588) and authorizes States to assert...criminal jurisdiction in Indian country only after acquiring the consent of the tribes in the States by referendum of all reservated Indians. In 1953, Public Law 280, 83d Congress (67 Stat. 588) conferred to States...criminal jurisdiction over Indian country. Tribes have been critical of Public Law 280 because it authorizes the unilateral application of State law to all tribes without their consent and regardless of their needs or special circumstances. Moreover, it appears that tribal laws were unnecessarily preempted and, as a consequence, there was no law and order in some tribal communities. Any State not presently having...criminal jurisdiction over Indian tribes would be required to obtain the consent of the tribes before assuming jurisdiction. The repeal of section 7..., however, does not affect States which have already assumed jurisdiction under Public Law 280. S.Rep.No., 90-721 (1967), *reprinted in* 1968 U.S.C.C.A.N. 1837, 1865-66."

[25] S.Rep.No. 101-167 (1989), *reprinted in* 1990 U.S.C.C.A.N. 712, 714. As of 1989, there were "approximately 900 law enforcement officers who are employed by Indian tribes. About 700 of these officers have been commissioned as BIA Deputy Special Officers." *Id.* at 713. By the mid-1990s, and including BIA criminal investigators, there were 2,070 tribal police officers and 168 tribal criminal investigators. Christopher B. Chaney, 14 BYU J.PubL. 173, 184 (2000). Note that there were 88 "638 contract" police departments as of 1995, Policing on American Indian Reservations, *supra* note 11, at 7.

[26] *Id.* at 716 [citing *Ortiz-Barraza v. United States*, 512 F.2d 1176 (9th Cir. 1975)].

[27] *Ortiz-Barraza v. United States*, 512 F.2d 1176 (9th Cir. 1975). *See also Cabazon*, *supra* note 19 at 1199-1200. "Where jurisdiction to try and punish an offender rests outside the tribe, tribal officers may exercise their power to detain the offender and transport him to the proper authorities." *Duro*, *supra* note 4 at 697.

[28] The BIA's law enforcement powers, similar to some federal LEAs, *see e.g.,* Title 21 U.S.C. § 878, are set forth at Title 25 U.S.C. § 2803. The statute is clear that the service or execution of warrants by BIA must relate "to a crime committed in Indian country and issued under the laws of (A) the United States..., or (B) an Indian tribe if authorized by the Indian tribe." § 2803(2). BIA can make warrantless arrests for offenses committed in Indian country, § 2803(3), and—importantly—can be requested by "any Federal, tribal, State, or local" LEA to "assist (with or without reimbursement)....in the enforcement or carrying out of the laws or regulations [the LEA] enforces or administers." § 2803(8).

[29] Title 25 U.S.C. § 2802(b)(1). DLES responsibilities include "(1) the enforcement of Federal law and, with the consent of the Indian tribe, tribal law; [and] (2) in cooperation with appropriate Federal and tribal law enforcement agencies, the investigation of offenses against criminal laws of the United States[.]" Title 25 U.S.C. § 2802(c)(1), (2).

[30] Title 25 U.S.C. § 2802(d)(1).

[31] *Id* at (d)(2).

[32] Title 25 U.S.C. § 2802(d)(1). Pursuant to this provision, the Departments of Justice and Interior entered into a 11/22/1993 memorandum of understanding (MOU), CRM § 676, *supra* note 14. The MOU primarily governs BIA-FBI law enforcement relationships.

[33] *MOU, supra* note 32, para III states that "[e]xcept as provided in Title 18 U.S.C. § 1162(a) and (c)," FBI jurisdiction "includes but is not limited to, certain major crimes committed by Indians against the persons or property of Indians and non-Indians, all offenses committed by Indians against the persons or property of non-Indians, all offenses committed by non-Indians against the persons or property of Indians."

[34] CRM § 675, retrieved on April 12, 2004, from *http://www.usdoj.gov/usao/eousa/foia_reading_room/usam/title9/crm00675.htm.*

[35] Policing on American Indian Reservations, *supra* note 11 at 8.

[36] *Duro*, *supra* note 4 at 681, n.2 and at 693 (*citing Talton v. Mayes*, 163 U.S. 376 (1896)).

[37] Pub.L.No. 90-284, Title II, 82 Stat. 73, 77 (1968). The ICRA is codified at Title 25 U.S.C. §§ 1301-1303.

[38] Title 25 U.S.C. § 1302(7).

[39] *Duro, supra* note 4 at 682 (*citing Oliphant v. Suquamish Indian Tribe*, 435 U.S. 191 (1978)). Note that "[a]t least 67% of American Indian victims of simple assault, [at least] 73% of American Indian victims of aggravated assault, and at least 79% of American Indian victims of robbery reported that their assailants were non-Indians." Chaney, *supra* note 25 at 185 (citation omitted).

[40] Title 25 U.S.C. § 1301(2). *See also* Pub.L.No. 101-511, § 8077(b)-(d), 104 Stat. 1856 (1990) as amended by Pub.L.No. 102-137, 105 Stat. 646 (1991). The effect of these two statutory changes to Title 25 U.S.C. § 1301(2) was to legislatively overturn that portion of *Duro, supra* note 4 at 688, which held that tribes had no jurisdiction over non-tribe member Indians. Thereafter, the Supreme Court upheld Congress' authority to enact § 1301(2), *United States v. Lara* _U.S._, 124 S. Ct. 1628 (2004).

[41] Second clause of second paragraph, Title 18 U.S.C. § 1152: "This section shall not extend...to any Indian committing any offense in the Indian country who has been punished by the local law of the tribe[.]" "[T]he Double Jeopardy Clause of the Fifth Amendment to the Constitution does not bar prosecutions for violations of tribal law involving the same conduct." CRM § 683, retrieved on April 12, 2004, from *http://www.usdoj.gov/usao/eousa/foia_reading_room/usam/title9/crm00683.htm. United States v. Wheeler*, 435 U.S. 313, 329-30 (1978); *Lara*, *supra* note 40.

[42] Wheeler, *supra* note 41 at 327 n.26.

[43] Title 25 C.F.R. § 11.100(b).

[44] Title 25 C.F.R. § 11.315, 11.450 (a)(1). As of 1995, there were 254 courts in Indian country, 232 Tribal, and 22 C.F.R. courts, Joseph A Myers, Elbridge Coochise, 79 Judicature 147, 149 (1995)

[45] *See supra* notes 16-21 and accompanying text.

[46] *See supra* note 21 and accompanying text.

[47] *See supra* note 7.

[48] *See supra* note 7 and accompanying text.

[49] 3 Op.Off.Legal Counsel at 111. In *State v. Jones*, 546 P.2d 235 (Nev. 1976), Nevada assumed jurisdiction over and convicted a non-Indian found on a reservation in possession of marijuana. "An Indian reservation is part of the State within which it is located, and offenses committed thereon, not involving Indians or Indian property, are punishable by the State." *Id.*

[50] 3 Op.Off.Legal Counsel at 113.

[51] *Id* at 116.

[52] *Id.* Crimes falling within this last category include ones that can be imported into the federal system via the ACA, Title 18 U.S.C. § 13.

[53] *Id* at 117. An example of such a crime would be the statutory rape of an Indian girl.

[54] *Id.*

[55] *Id.* This fourth category of crimes would include "speeding in the vicinity of an Indian school or in an obvious attempt to scatter Indians collected at a tribal gathering, and a breech (*sic)* of the peace that borders on an assault may in unusual circumstances be seen to constitute a Federal offense."

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- Training

How Do You Write an Article?

Authors should write in third person and use active voice. They should supply references when quoting a source exactly, citing or paraphrasing another person's work or ideas, or referring to information that generally is not well known. Authors should study several issues of the magazine to ensure that their writing style meets the *Bulletin's* requirements. **Most important**, authors should contact the *Bulletin* staff for the expanded author guidelines, which contain additional specifications, detailed examples, and effective writing techniques, or access *www.fbi.gov/publications/leb/leb.htm.*

The *Bulletin* judges articles on relevance to the audience, factual accuracy, analysis of the information, structure and logical flow, style and ease of reading, and length. The staff edits all manuscripts for length, clarity, format, and style.

The *Bulletin* generally does not publish articles on similar topics within a 12-month period or accept articles previously published or currently under consideration by other magazines. Because it is a government publication, the *Bulletin* cannot accept articles that advertise a product or service.

How Do You Submit an Article?

- Send a query letter and short outline or
- Submit a completed manuscript to—

  Editor, *FBI Law Enforcement Bulletin*
  FBI Academy, Quantico, VA 22135
  Telephone: 703-632-1952
  E-mail: leb@fbiacademy.edu.

The *Bulletin* staff will review queries and articles and advise the authors of acceptance or rejection. The magazine cannot guarantee a publication date for accepted articles.

Authors also should submit three copies of their articles typed and double-spaced on 8½- by 11-inch white paper with all pages numbered. Authors should include an electronic version of the article saved on computer disk. A photograph of the author(s) should accompany the article. Authors may also e-mail their articles.

The Bulletin Notes

Law enforcement officers are challenged daily in the performance of their duties; they face each challenge freely and unselfishly while answering the call to duty. In certain instances, their actions warrant special attention from their respective departments. The *Bulletin* also wants to recognize those situations that transcend the normal rigors of the law enforcement profession.

Chief Granucci

Officer Overton

Chief Jim Granucci of the San Carlos, California, Police Department was the first officer responding to an elderly man who suffered heart failure; the chief found the victim unconscious and without a pulse or signs of respiration. He immediately began CPR. Officer Marti Overton quickly arrived on the scene with a portable automated external defibrillator and administered one electrical impulse and rescue breathing while Chief Granucci continued chest compressions. The man recovered and began to breathe on his own before being transported to a local hospital. The quick actions and expertise of Chief Granucci and Officer Overton resulted in a saved life.

Officer Hughes

While off duty at a lake with friends, Officer Kristie Hughes of the Sand Springs, Oklahoma, Police Department heard screams coming from a nearby swimming area. She then observed a young male pointing at the water and yelling that something had his legs. Officer Hughes immediately entered the lake and swam to the boy, who continued to scream that he could not move his legs and grabbed onto her in a panic. She then calmed the young man, maintained him above water, and helped him to shore. Officer Hughes ensured that he had no further injuries and advised the boy's uncle of the incident. The courage and quick thinking of Officer Hughes saved the boy's life.

Nominations for the ***Bulletin Notes*** should be based on either the rescue of one or more citizens or arrest(s) made at unusual risk to an officer's safety. Submissions should include a short write-up (maximum of 250 words), a separate photograph of each nominee, and a letter from the department's ranking officer endorsing the nomination. Submissions should be sent to the Editor, *FBI Law Enforcement Bulletin*, FBI Academy, Madison Building, Room 201, Quantico, VA 22135.

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Patch Call

A depiction of the badge of the Honolulu, Hawaii, Police Department serves as the design for the agency's patch. The quartered heraldic device at the center features two sections that depict the eight stripes of the Hawaiian flag and two that feature a yellow field with a ball pierced on a staff, representing the kapu stick—an emblem of police authority.

The patch of the Las Vegas, Nevada, Paiute Tribal Police Department reflects the tribe's successful economic development as evidenced by three championship golf courses—Wolf, Snow, and Sun—on tribal lands. The desert tortoise, a survivor of the harsh conditions, symbolizes the tenacity and strength of the Paiute people.